

REMARKS

Claims 11, 14, 21-25, and 27-32 were pending in the application as of the issuance of the Office Action. Claims 11 and 27 have been amended. Accordingly, upon entry of the amendments presented herein, claims 11, 14, 21-25, and 27-32 will remain pending in the application.

Support for the amendments to the claims can be found throughout the specification and in the claims as originally filed. Specifically, support for the amendment to claims 11 and 27 can be found at least, for example, at page 2, lines 14-17; page 8, lines 3-6; page 12, lines 3-6; page 12, lines 17-19; page 12, lines 28-30; page 15, lines 3-6; page 15, lines 16-18; page 15, lines 25-27; page 16, lines 6-9; page 17, lines 10-22; page 17, line 32 to page 18, line 4; and page 19, lines 14-15 of the specification.

No new matter has been added by the claim amendments presented herein. The foregoing claim amendments have been made solely for the purpose of expediting prosecution of the present application and should in no way be construed as an acquiescence to any of the Examiner's rejections in this or in any former Office Action issued in the present application. Applicants reserve the right to pursue the subject matter of the present claims prior to being amended herein in this application or in another related application.

In view of the foregoing claim amendments and the arguments set forth below, Applicants respectfully submit that the claims are in condition for allowance.

***Rejection of Claims 11, 14, 21-25 and 27-32
Under 35 U.S.C. § 102(b)- Anticipation***

The Examiner has maintained the rejection of claims 11, 14, 21-25 and 27-32 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No.: 5,320,861. Specifically, the Examiner asserts that "the Tomah presscake of US '861 is enriched above and beyond a conventional cranberry presscake... [t]hus, since the product of US '861 is enriched above a conventional presscake, the claimed composition is considered anticipated by the product of US '861" (pages 2-3 of the present Office Action).

Applicants respectfully disagree. However, solely in the interest of expediting examination, Applicants have amended claims 11 and 27 to specify that the compound

encompassed by the pending claims is “present in a greater amount than that found in a cranberry *Tomah* presscake.” As such, the claimed compositions do not comprise the same extract as set forth in U.S. Patent No.: 5,320,861 (*i.e.*, the Tomah presscake) and is instead enriched for a compound *above* and *beyond* the amounts found in the Tomah presscake.

Although Applicants acknowledge that an initial step in the preparation of the claimed cranberry extract may use the methods of U.S. Patent No.: 5,320,861, the present application teaches that the product isolated by the methods of U.S. ‘861 can be further enriched for health promoting components (*e.g.*, phenolic acids, flavonoids, fiber, omega-3-fatty acids, tocochromanol, triterpenoids, and ellagic acid) that are useful in treating or preventing a variety of health-related disorders and diseases (see, for example, page 2, lines 14-17 and page 8, lines 3-6 of the specification). Accordingly, the compositions of the invention encompass fractions isolated or extracted from a cranberry presscake (*i.e.*, a Tomah presscake) using methods described in the specification, including solvent extraction (see, for example, page 16, lines 6-10 of the specification), saponification followed by ether extraction (see, for example, page 16, lines 15-22 of the specification), and chromatographic fractionation (see, for example, page 16, line 26 to page 17, line 10 of the specification). These fractions may be enriched for phenolic compounds (see page 12, lines 4-5 of the specification), flavonoid compounds (see page 12, lines 17-19 of the specification), fiber (see page 12, lines 28-30 of the specification), tocochromanols (see page 15, lines 3-6 of the specification), triterpenoids (see page 15, lines 16-18 of the specification), or ellagic acid (see page 15, lines 25-27 of the specification). Specific compounds present in decharacterized cranberry (*e.g.*, the Markham Presscake, the Tomah Presscake) which may be further enriched using the methods taught in Applicants’ specification are provided in Tables 13-15, at pages 43, 44 and 47-59 of the specification. The specification additionally teaches that these isolated fractions can be combined to provide compositions enriched for a desired combination of components having a therapeutic effect on a given disease or condition (see, for example, page 17, lines 13-22 of the specification). *In vitro* and *in vivo* methods of determining the therapeutic activity of the enriched fractions, *e.g.*, phenolic rich fractions, are also provided (see page 17, line 24 to page 19, line 20 of the specification).

Accordingly, the pending claims are directed to novel compositions of cranberry extract which have been enriched for desired compounds above and beyond what is present in the

Tomah presscake. As such, the extract described in U.S. Patent No.: 5,320,861 neither teaches nor suggests the claimed invention. The claimed invention is therefore not anticipated by U.S. Patent No.: 5,320,861.

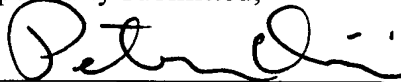
Based on the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection of the pending claims under 35 U.S.C. § 102(b).

CONCLUSION

In view of the foregoing amendments and remarks, reconsideration and withdrawal of all rejections and allowance of all pending claims is respectfully requested. If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' attorney at (617) 227-7400.

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Respectfully submitted,

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